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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/037,874	11/09/2001	John C.K. Hui	4857-00001/CPG	6093

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EXAMINER	
THANH, QUANG D	

ART UNIT	PAPER NUMBER
3764	

DATE MAILED: 04/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)	
	10/037,874	HUI, JOHN C.K.	
	Examiner	Art Unit	
	Quang D. Thanh	3764	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 March 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☒ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See Continuation Sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-7,9-14,16,19-25 and 27-42*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Continuation of 5. does NOT place the application in condition for allowance because: In response to applicant's arguments that Stark is non-analogous art, the examiner respectfully disagrees. It has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Stark is cited to teach a medical device comprising a local handheld computer 20 having a data structure that can store the patient monitoring results (step 3 in fig. 1, col. 7, lines 15-18), which then communicates with another remote central computer 16 over the telephone line through modem connections (Internet) for further processing of the patient data (step 5 in fig. 1, col. 7, lines 32-52). Therefore Stark is in the medical field that utilizes medical instrument to treat patient just like the field of applicant's endeavor, and it is cited to address the particular application of using a local handheld computer having a data structure that can store the patient monitoring results, which then communicates with another remote central computer 16 over the telephone line through modem connections (Internet) for further processing of the patient data just like the applicant's system.
In response to applicant's arguments that Stark teaches away from key aspects of the present invention, the examiner respectfully disagrees. Stark teaches many embodiments, and while one of the embodiments (col. 10, lines 35-57) mentioned by applicant may not be applicable to the present invention, other embodiment taught by Stark are applicable and pertinent to the particular problem with which the applicant was concerned. This is exemplified by the teaching of using a local handheld computer 20 having a data structure that can store the patient monitoring results (step 3 in fig. 1, col. 7, lines 15-18), which then communicates with another remote central computer 16 over the telephone line through modem connections (Internet) for further processing of the patient data (step 5 in fig. 1, col. 7, lines 32-52), for the purpose of communicating patient information over the Internet in order to allow review by a treatment professional or to allow updating patient database (col. 7, line 50 to col. 8, line 3).
In response to applicant's argument that there is no motivation to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See In re Fine, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and In re Jones, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it is unclear how the applicant can disregard the teaching of Stark as discussed above and Stark also clearly teaches (in col. 7, line 50 to col. 8, line 3) the motivation to combine the references, for the purpose of communicating patient information over the Internet in order to allow review by a treatment professional or to allow updating patient database.

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